Summaries of Selected Cases Concluded by Alternative Dispute Resolution

Cases Concluded under Internal Complaint Handling Programme

ENVIRONMENTAL PROTECTION DEPARTMENT (EPD)

Case No. OMB 2002/1592

EPD – collection of charges – collecting excessively high and unreasonable photocopying charges

On the complainant's request, EPD staff measured the noise levels of the lifts in his building on three occasions. When he asked for a copy of the test reports, he was told that photocopying would cost $1.50 per page. With 25 pages and an administrative charge of $750, he had to pay $787.50 for the three reports. The complainant alleged that EPD's charge was excessive. The administrative charge for staff cost was unreasonable.

2. EPD clarified that the original data were technical in nature and intended for internal use. An officer had to re-arrange the technical data before the reports could be presented to a layman. The administrative charge was for one hour's work by an Environmental Protection Officer. To avoid future misunderstanding, the Department had instructed its frontline staff to explain this arrangement clearly to the public during enquiries.

3. The Ombudsman considered that EPD had provided a detailed explanation. Moreover, the charge was not improper as the rates were based on established standards.

HOME AFFAIRS DEPARTMENT (HAD)

Case No. OMB 2001/3801

HAD – public announcement – failing to give prior notice on the temporary closure of a Community Cyber Point

The complainant alleged that HAD did not observe the publicised opening hours of the Community Cyber Point ("Cyber Point") operated by staff of a Community Centre ("the Centre").

2. Because of low utilisation on Sundays, HAD closed the Centre temporarily and deployed the staff elsewhere. HAD apologised and explained the arrangement to the complainant. While the temporary closure of the Cyber Point was necessary for efficient deployment of resources, HAD had not given any advance notice. The Department accepted our recommendation to notify the public before any change to the opening hours of its community facilities and services.

HOSPITAL AUTHORITY (HA)

Case No. OMB 2002/2213

HA – staff attitude – failing to provide a ventilated reception area at the Medical Report Office of a hospital and poor staff attitude

While the complainant was collecting his medical report at a HA hospital in June, his request to open the door of an adjacent office for ventilation of the reception area was rudely turned down by a staff.

2. On receipt of the referral, HA apologised to the complainant. HA admitted that some people might feel uncomfortable in the poorly ventilated reception area during the hot weather. To improve the ventilation there, HA had installed electric fans and asked the staff to keep the door of an adjacent office open. HA had also reminded staff to pay attention to the special needs of visitors and be flexible in handling requests.

KOWLOON-CANTON RAILWAY CORPORATION (KCRC)

Case No. OMB 2002/3439

KCRC – staff attitude – abusing authority and being impolite when inspecting a passenger's identity card

While the complainant was travelling on the Light Rail of KCRC, a Passenger Services Assistant ("PSA") checked his Octopus card and accused him of violating the "travel in single direction" rule. The PSA said that a fine would be imposed upon him. The complainant alleged that after snatching his identity card, the PSA had refused to return it to him. He was able to get it back only with Police assistance.

2. KCRC pointed out that the Light Rail by-laws authorised company staff to request passengers who had violated the rules to produce proof of identity. The PSA did not snatch the identity card or refuse to return it. The complainant had voluntarily produced his identity card and left without getting it back.

3. KCRC's investigation showed that the complainant had no intention of violating the said "travel in single direction" rule. KCRC, therefore, decided to waive the fine.

LEGAL AID DEPARTMENT (LAD)

Case No. OMB 2002/3983

LAD – Legal Aid Ordinance – delaying the release of compensation

The victim of a traffic accident, the complainant, had been granted legal aid to claim damages from the driver concerned. She complained against LAD for delaying the release of compensation after the court had passed the verdict on the amount.

2. Under the Legal Aid Ordinance, the Director of Legal Aid could retain money or property recovered by the aided person as legal expenses defrayed by the Department for the case before releasing the balance to the aided person. This was stated in the legal aid application form. LAD had released the compensation in two payments to the complainant. The balance could be released only after LAD had calculated the complainant's contribution towards the costs.

TRANSPORT DEPARTMENT (TD)

Case No. OMB 2002/4071

TD – handling of request – delay in response to a proposal to increase the frequency of green minibus service

The complainant requested TD to increase the frequency of a green minibus service during off-peak hours at noon and peak hours in the evening. After eight months, TD had yet to give a definite reply.

2. TD explained that it was necessary to survey commuters' demand in the periods concerned. The complainant made the request just before the commencement of the summer vacation. A survey conducted in the ensuing months could not reflect the actual demand and so it had to be postponed. The survey conducted later showed that the existing service was adequate and it was unnecessary to increase the frequency. The Department had replied the complainant on the basis of the findings.

Summaries of Selected Cases Concluded by Alternative Dispute Resolution

Annex 10

Case Concluded by Mediation

INTELLECTUAL PROPERTY DEPARTMENT (IPD)

Case No. OMB 2002/3508

IPD – trade mark registration – failing to provide clear guidance on the application procedures

The complainant applied to register the trade mark of her food product. Following IPD's guidance, she searched and found no identical or similar trade mark from the Department's computer records. However, her application was rejected by IPD as there was already an identical or very similar trade mark registered with the Department. The complainant alleged that IPD's guidance on the procedures for application was unclear, resulting in the rejection of her application. Subsequently, the complainant submitted a second application.

2. As no grave maladministration was involved, this Office suggested resolving the matter by mediation. Both parties agreed.

3. At the mediation meeting, IPD representative explained that there were two ways to search for trade marks registered with the Department. The applicant could conduct his own search by following the guidance of IPD staff. However, the result of the search would depend on the information input into the computer. Alternatively, the applicant could file a copy of Form 2 with IPD for assessment.

4. In the original application, the complainant had conducted her own search of IPD's computer record. In the absence of information as to how the complainant conducted the search, it was not possible to ascertain why the check failed to identify identical or similar trade marks.

5. After candid discussions, the complainant could understand the trade mark registration process. Meanwhile, the assessment on her second application was completed and accepted by IPD for formal application.

Case Concluded under Rendering Assistance/Clarification

AGRICULTURE, FISHERIES AND CONSERVATION DEPARTMENT (AFCD)

Case No. OMB 2001/3943

AFCD – fish culture licence – impropriety and failure to follow guidelines in enforcement duties

The complainant alleged that when AFCD staff boarded his raft, they did not disclose their identity, or tell him what laws he had violated. He was dissatisfied with the way AFCD staff took his statement.

2. Section 8 of the Marine Fish Culture Ordinance ("the Ordinance") stipulated that fish rafts were not licensed for commercial recreational fishing. The raft was not structurally safe for such purposes. Moreover, the Department was empowered to regulate fishing activities in fish culture zones.

3. One evening in 2001, AFCD enforcement staff saw the complainant convey several people to his raft. On boarding the raft, AFCD staff found those people to have been invited by the complainant to fish there. AFCD staff identified themselves and pointed out that such activities were in breach of the Ordinance. Throughout the operation, the complainant was rude, obtrusive and tried to obstruct their enforcement action. As this was a first offence, a written warning was issued to the complainant.

4. The complainant alleged that AFCD staff did not reveal their identity on boarding his raft. Claiming that his personal safety was threatened, he had used abusive language at them. AFCD staff revealed their identities only subsequently and informed him of his offences.

5. In early 2000, AFCD had issued an instruction to all licensees on the prohibition of fishing activities on fish rafts under Section 10(1) of the Ordinance. On renewal of licence, an additional condition stated that a licensee should not permit the use of a raft for fishing activities. In May 2001, all licensees were reminded in writing to observe the licensing conditions.

6. AFCD's guidelines required enforcement staff to reveal their identity while aboard rafts for enforcement action. They also had to explain to the offender his violation of the law. AFCD believed that the staff concerned had followed these procedures.

7. In the absence of an independent third party or other evidence, this Office could not make a ruling on the statements of the complainant and AFCD. However, the complainant admitted to having sworn at AFCD staff.

8. Later, the complainant attended an interview and gave his statement to AFCD. AFCD denied that its staff had requested him to sign on a blank statement. At the beginning of the interview, AFCD staff had cautioned the complainant and noted this on the statement form. The complainant was asked to sign in an appropriate space but he refused. After giving the statement under caution, he still refused to sign. The complainant told this Office that he did not dispute the statement but he had refused to sign.

9. This Office considered that the complainant had violated the law by offering his raft for fishing. It was, therefore, legal and reasonable for AFCD to take enforcement action. Furthermore, as all licensees had been forewarned about the licensing conditions, there was no maladministration on the part of the Department. After studying his statement and representations of the staff concerned, this Office considered that there was no impropriety in the statement-taking process.

10. It was apparent that the complainant was finding fault without any ground. By lodging a complaint with this Office, he was just trying to put pressure on AFCD. AFCD eventually decided not to bring any charge against him.

COMPANIES REGISTRY (CR)

Case No. OMB 2002/1098

CR – company names index – refusing to refund application fees in full

The complainant intended to register a company name. As she could not find the name in CR's computerised index, she submitted an application and paid the registration fees. CR rejected her application since an application under the same name had been approved shortly before her submission. CR refunded only part of the registration fees.

2. CR explained that a time gap between the submission of applications and the listing of approved names on the index was inevitable. With more than a hundred new applications every working day, it would be impractical to keep a list of all names under application. At times, certain names could not be registered for various reasons, e.g. statutory restrictions. However, CR was legally empowered to charge applicants certain fees because services had already been provided, even though the application was disapproved.

3. The Ombudsman suggested that CR should make it clear to applicants that absence of a name in the company names index was no assurance that it could be registered and that certain fees were not refundable if an application was unsuccessful. CR had revised its pamphlets to incorporate our suggestions.

CUSTOMS AND EXCISE DEPARTMENT (C&ED)

Case No. OMB 2002/1698

C&ED – enforcement action – inefficiency and delay in enforcement action against infringement of trade mark

In December 2001, the complainant telephoned the C&ED hotline centre, reporting that a telecommunications company was suspected of selling fake mobile phone covers. A few days later, he called the centre again to provide the addresses of five branches of the same company. He was given two file references for his reports.

2. In February 2002, the complainant telephoned the centre twice to enquire about progress but was not given any concrete reply. When he called in April 2002, the centre told him that it did not have the details of his reports. He was asked to provide the information again so that the investigation officers could follow up. The complainant alleged that C&ED was inefficient, stalling over enforcement action and losing the details of his complaints.

3. C&ED explained that investigation into offences involving copyright and trade marks was complicated and would normally take a long time to complete as the participation and assistance of trade mark proprietors were required. However, C&ED had standing instructions to monitor the progress of investigations. On completion of an investigation, the result would be announced or reported to the complainant as appropriate.

4. As investigations and prosecutions were confidential, the hotline centre did not have access to cases under investigation. The information that the complainant was asked to provide could help to identify the investigation team to which his enquiry would be directed. On receipt of the enquiries from the complainant, the hotline centre had informed the investigation officers to follow up.

5. This Office noted that to maintain confidentiality, information on investigation and prosecution should be kept on a need-to-know basis. Misunderstanding arose as the public might not be aware that investigation into offences relating to copyright and trade marks was complicated.

Summaries of Selected Cases Concluded by Alternative Dispute Resolution

EDUCATION DEPARTMENT (ED)

Case No. OMB 2002/1797

ED – noise nuisance – failing to resolve noise nuisance generated by a school

The complainant alleged that a primary school near his residence regularly generated excessive noise : pupils playing in the playground, announcements over loudspeakers at assemblies, pop music during gymnastic exercises and gala activities. Complaints had been made to ED but all to no avail.

2. ED pointed out that the school had been advised not to generate excessive noise. Even when it was necessary to use loudspeakers, the school would control the volume so as not to disturb the neighbourhood.

3. Our investigation officer visited the school and the building in which the complainant lived. There, the pupils were not noisy whilst playing in the playground. The announcements over the loudspeakers could barely be heard in the building. There was no pop music or gymnastic exercises at the assembly. The headmaster stated that teachers and pupils were aware of the need to keep the noise level down so as not to disturb neighbouring residents. Except for some special occasions, there was no singing at assemblies.

4. This Office considered it normal for pupils to play in the playground before lessons. The period was short and the noise generated not unacceptable. As the complainant could not provide evidence to support his allegation that ED displayed favoritism towards the school when handling his complaint, The Ombudsman decided not to take any further action.

FIRE SERVICES DEPARTMENT (FSD) AND BUILDINGS DEPARTMENT (BD)

Case No. OMB 2002/0900
OMB 2002/0901

FSD and BD – staff attitude – being impolite when answering enquiry

The complainant reported to FSD the obstruction caused by hawker stalls as well as the erection of a metal gate in a rear lane between two buildings. He regarded the rear lane as a fire escape for one of the buildings, where a fire had once broken out. He alleged that the two officers who answered his calls were impolite. When he made a similar report to BD by telephone, the complainant was told that the obstructions posed no immediate danger and so no follow up action would be taken.

2. FSD pointed out that they had informed the complainant over the phone that a rear lane between two buildings was not a fire escape under the Fire Services Ordinance. Thus, the Department could not take any action. As the complainant was dissatisfied with the reply, the case was referred to a district fire station for site inspection. The inspecting officer confirmed to the complainant that the fire escape routes of the buildings were not obstructed and that the Department could not take prosecution action as a rear lane was not a fire escape.

3. From the taped conversation between FSD officer and the complainant and related documents, we could find no evidence to substantiate the complainant's allegations. Moreover, this Office accepted that FSD had no statutory authority to take any prosecution action under the circumstances.

4. There were unauthorised structures in the rear lane behind both shops A and B. The one behind shop A was under a Removal Order ("RO"). After the structure was demolished, BD rescinded the RO. On receipt of the complaint, the Department discovered that new unauthorised structures had been erected. However, the subject officer failed to accord top priority for clearance, as required by departmental guidelines. BD took enforcement action only upon receipt of the enquiry from this Office.

5. As for the unauthorised structure in the rear lane behind shop B, BD had not followed up even when the owner defied a court ruling requiring its removal. The Department admitted that its existing manual was unclear as to what action should be taken in such situations. On receipt of our enquiry, BD actioned against the owner. This Office advised the Department to review its present manual to specify the action to be taken for non-compliance of a RO.

6. BD admitted that when answering the complainant's call, the officer did not search the files on unauthorised structures for the latest position. The Department apologised to the complainant and undertook to review its guidelines to prevent recurrence.

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT (FEHD)

Case No. OMB 2002/2277

FEHD – handling of complaint – failing to follow up on a complaint about water dripping from air-conditioner

The complainant had made repeated complaints to FEHD about water dripping from the air-conditioner of a flat on the upper floor but the problem persisted.

2. FEHD claimed that when they received the complaint in April 2001, an Environmental Nuisance Investigator made an inspection immediately and issued a notice to advise the occupier on the upper floor to drain the water properly from the air-conditioner. The dripping had then stopped.

3. In June 2001, the complainant reported the recurrence of dripping. After an inspection and the issue of another notice to the occupier, the situation improved. However, the problem surfaced again two months later. FEHD actioned again but the dripping did not stop until November 2001.

4. In July 2002, the dripping re-appeared. Upon notification of a fresh complaint lodged with this Office, FEHD re-activated its enquiry and confirmed from an inspection the recurrence of the nuisance. They advised the occupier to repair the air-conditioner and issued an Investigation Notice and Nuisance Notice. The air-conditioner was repaired and the problem resolved.

5. The Ombudsman considered that FEHD had taken immediate action on the complaint and had followed up the case positively. There was no maladministration in the process.

6. The complainant indicated appreciation of the attitude of FEHD staff in helping to resolve a long-standing problem.

HIGHWAYS DEPARTMENT (Hy D)

Case No. OMB 2001/3858

Hy D – public works – not properly supervising a contractor in road maintenance work

The road reconstruction work in the vicinity of the complainant's office had been the cause of traffic congestion since its commencement in 1999. The project completion dates indicated on the display boards kept on changing with no sign of completion.

2. Apart from road resurfacing, the project included the laying of underground water pipe and related well works. Completion was expected in three years. To minimise disruption to traffic, the project was divided into 200 sections. The completion date shown on the display boards was the date for completion of each section and not for the whole project.

3. The performance of contractors was reflected in Hy D's quarterly evaluation reports. On one occasion, delay was caused by the contractor's financial problems. After discussion with the Department, the contractor was able to bring progress back to normal. Subsequent delay was caused by the need to remove a large amount of rocks from the excavation and to reinforce a lamp post tilting from the excavation. The project was finally completed in March 2002.

4. This Office considered that Hy D had taken appropriate action to monitor and to urge the contractor to complete the project according to schedule. As the information on the display boards could generate misunderstanding, we proposed that the completion date for the whole project, in addition to those for specific sections, should be listed. Hy D agreed and designed a new display board.

HOUSING DEPARTMENT (HD)

Case No. OMB 2001/3645

HD – estate management – failing to give sufficient guidelines to the property management agent on the management of emergency vehicular access

The complainant alleged that an emergency vehicular access ("EVA") on a restricted road in a housing estate was frequently misused by non-emergency vehicles because adjacent tenants, their visitors and authorised persons could use the road. As it was an EVA, HD should keep it clear at all times.

2. The property management agent ("PMA") had put up notices at the entrance stating that any person who wanted to use the road had to apply for permission from the estate office which, in turn, would issue a written notification to the PMA. The PMA would patrol the road regularly and take enforcement action, e.g. issue warning notices or impound any vehicle illegally parked along the road.

3. However, such measures were not effective. From the records on warning notices issued and vehicles impounded, this Office noted that illegal parking on that road had been very serious. Meanwhile, the management contract did not require the PMA to manage the EVA. In addition, HD had not issued specific guidelines to the PMA on the management of the access. In case of an incident resulting in injuries or death, HD would be responsible. This Office suggested that HD should consider deterrent measures.

4. In response, HD instructed the PMA to station staff at the entrance. Moreover, the PMA would increase its patrol of the road and take strict enforcement action against unauthorised parking. The management of the vehicular access had since improved.

HOUSING DEPARTMENT (HD)

Case No. OMB 2002/0247

HD – recovery of public housing units – unreasonably disposing of the complainant's properties

Suspecting the complainant's public housing unit to have been abandoned, HD decided to recover the unit after an in-depth investigation.

2. The recovery action was conducted jointly by staff of HD and the property services company ("PSC"). Breaking into the unit, staff took photographs for record. After checking for money or suspect objects, PSC staff cleared the unit, keeping only eight items considered to be of value.

3. The complainant alleged PSC to have disposed of several valuable items, including documentary proof of work experience, birth certificates and family photo albums. The complainant then claimed for damages of several million dollars.

4. As both HD and the complainant could not produce a reliable record of the items removed from the unit, this Office could not substantiate whether or not the loss of the complainant was as substantial as alleged. There was clearly a lack of communication between HD staff taking the command and the PSC staff executing the operation. HD should, therefore, be held partly responsible for failing to keep a detailed record of items removed from the unit.

5. HD had reviewed its procedures on recovery of housing units. In addition, HD and the PSC had assisted the complainant to overcome the inconveniences or difficulties arising from the recovery of the unit and the loss of his properties.

HOUSING DEPARTMENT (HD)

Case No. OMB 2002/2031

HD – failure of flushing system – delay in solving the problem

The complainant, a tenant of a Home Ownership Scheme estate in an area with no sea water supply but water from deep bore well for flushing. The two water pumps broke down completely three years after intake.

2. During the initial intake of the estate, HD was aware of the frequent malfunctioning of the pumps. Approval was subsequently obtained from Water Supplies Department ("WSD") to switch to fresh water flushing. However, HD engaged in repeated negotiation with WSD on the specifications of the modification works. At the same time, HD deferred the modification works as these were improvements to existing facilities and so flat owners should bear part of the cost. HD also wanted to hold the flushing system contractor responsible for the defective pumps.

3. Two years after the intake of the estate, HD was aware that the first pump was beyond repair. As HD had taken over the development four years before the intake, the flushing system contractor's warranty had long expired. HD, being the representative of the Hong Kong Housing Authority as developer, should be responsible for the remedial works while its warranty to flat owners had yet to expire. Whether the contractor should still be held responsible was purely a contractual issue between HD and the contractor. Moreover, this Office noted that there was no evidence to suggest that the problems were due to defects of the pumps. When the second pump broke down, HD was still entangled in the responsibility issue and its negotiation with WSD over the specifications of the modification works. Flushing water had stopped for 20 months before the complainant lodged the complaint with this Office. HD had, therefore, delayed taking action to solve the problem.

4. HD subsequently carried out the modifications at its own expense to switch to fresh water flushing according to WSD's specifications.

HOUSING DEPARTMENT (HD)

Case No. OMB 2002/2502

HD – Voluntary Departure Scheme – failing to issue a "Certificate of First Staff Count" rendering the complainant unable to get a job from private estate management agents awarded contracts under the Phased Service Transfer Programme

In January 2000, HD launched the Phased Service Transfer Programme ("PSTP") to outsource estate management and maintenance services to private property management agents by phases. At the same time, the Department introduced the Voluntary Departure Scheme ("VDS") to solve the consequential problem of surplus staff.

2. The successful PSTP tenderers were required to employ a specified quota of VDS participants, i.e. the "Staff Count". If VDS participants were employed by the service contractors within six months from their departure date, they would go towards the Staff Count and be eligible for a "sign-up bonus".

3. In July 2001, HD implemented the second phase of PSTP. HD also issued a "Certificate of Second Staff Count" ("Second Certificate") to eligible staff members, certifying that they were qualified for inclusion into the Staff Count for the second phase.

4. The complainant was a former HD staff who had opted for VDS in September 2000. He was issued with the Second Certificate. As he was not offered any job during the period between his departure and the issue of the Second Certificate, he thought it was due to HD failing to issue him with a "Certificate of First Staff Count" ("First Certificate"). In fact, prior to July 2001, HD had considered the "Staff Count" arrangement a one-off exercise and did not issue any First Certificate. The employment of any former HD staff member was dependent on his reaching an agreement with his prospective employer and had nothing to do with a First Certificate.

5. The Ombudsman considered that there was no maladministration on the part of HD but that the complainant had deliberately provided misleading information to this Office. It was apparent that his aim was to pressurise HD into awarding him with a "sign-up bonus".

Summaries of Selected Cases Concluded by Alternative Dispute Resolution

LABOUR DEPARTMENT (LD)

Case No. OMB 2002/0490

LD – workmen's compensation – failing to stop abuse of the employees' compensation scheme

The complainant, an insurer in an employees' compensation claim, suspected that the employee concerned had taken up a second paid job while on sick leave. Even when this was reported to LD, no action was taken. The complainant questioned LD's role in stopping abuse of the employees' compensation scheme.

2. Under the Employees' Compensation Ordinance ("ECO"), an employee injured at work is entitled during sick leave to periodical payments, calculated at the rate of four-fifths of the difference between the employee's monthly earnings at the time of the accident and his monthly earnings (if any) during sick leave. The employer has a statutory duty to supply accurate information relevant to the accident, including the injured employee's monthly earnings based on which the compensation payable is assessed by LD.

3. The ECO does not prohibit an injured employee from working while on sick leave, provided that any earnings so derived are taken into account in determining the periodical payments. LD has no authority to arbitrate or adjudicate any dispute over the amount of payment. Any dispute has to be settled by the court.

4. To seek a reduction in the periodical payments, sufficient evidence has to be produced to LD and/or the court on the employee's second employment.

5. However, this Office observed that, in this case, the evidence adduced by the complainant was circumstantial and further verification was necessary. LD had therefore acted in accordance with the ECO and there was no evidence of maladministration.

LANDS DEPARTMENT (Lands D) AND BUILDINGS DEPARTMENT (BD)

**Case No. OMB 2002/2680
OMB 2002/3579**

Lands D and BD – enforcement action - impropriety in handling complaints of uneven ground settlement at an open space

Uneven ground settlement occurred in an open area in front of the complainant's premises. The complainant lodged a complaint with a District Office ("DO") of Home Affairs Department in January 2001. DO sought advice from a District Lands Office ("DLO") of Lands D and BD. DLO confirmed that the area was unleased Government land. BD inspection showed no sign of structural distress or instability of the retaining wall surrounding the area. DO informed the complainant of BD's findings and DLO's request to BD for considering enforcement action under the Buildings Ordinance. However, neither DLO nor BD took any action for 19 months.

2. Four months after receipt of DLO's request, BD suggested that DLO should take action as it was not appropriate to do so under the Buildings Ordinance. When the complainant reported aggravation of uneven ground settlement, DLO requested that BD conduct an urgent re-assessment. After inspecting the site, BD did not respond to DLO or the complainant. When contacted, BD did not tell the complainant that there was no structural distress or instability of the retaining wall.

3. In 1988, someone carried out illegal excavation works to form a retaining wall and a platform on that site. Prosecuted by DLO, the party was required by law to undertake remedial works. An Authorised Person was appointed, completed the work and submitted a certificate of completion of works. However, the certificate was rejected in the absence of an accompanying geotechnical investigation report. The remedial works had been left unattended since. In 1990, BD referred the case to DLO for enforcement action. However, despite several exchanges of correspondence between BD and DLO, no enforcement action was taken.

4. This was typical bureaucratic buck-passing. Apart from delaying enforcement action, this would leave an undesirable impression to the public. The Ombudsman suggested that BD and Lands D should resolve their differences and take early enforcement action. They should also provide clearer guidelines for staff. This Office would monitor the developments.

Summaries of Selected Cases Concluded by Alternative Dispute Resolution

LEGAL AID DEPARTMENT (LAD)

Case No. OMB 2002/0951

LAD – handling of application – failing to reply on the progress of an application

The complainant was a prisoner who applied to LAD for legal aid to claim damages for medical negligence. When the means test and statement were taken at the prison, the complainant signed all documents, including a statutory declaration in the name of Mr. A. However, when he subsequently requested for a medical report, he attached a copy of Mr. B's identity card as proof of his identity.

2. LAD did not accept the documentary proof. The complainant then admitted to being Mr. C and claimed Mr. A as his pseudonym and Mr. B his brother. However, he could not produce any documentary proof to support his claim as C. As investigation into his identity was underway, LAD refused to disclose the progress of his application during two subsequent enquiries from the complainant.

3. Nine months after the initial application, the complainant presented to LAD a copy of Mr. C's identity card as proof of his identity. Since Mr. C was not the applicant of the original legal aid application, the Department told him to re-apply in the name of Mr. C.

4. Under LAD's internal instructions, whenever an application for legal aid could not be approved within three months of submission, the applicants should be informed of the progress. LAD had never encountered any case like this involving dubious identities; so it could not comply with the target time.

5. LAD subsequently informed Mr. A that his application was rejected because the personal details in the application form did not tally with the proof of identity; and advised Mr. C that his legal aid application was rejected for lack of reasonable grounds to institute proceedings.

6. The Ombudsman accepted that the application had been processed in accordance with established policy and procedures. This Office suggested that when an application could not be approved within three months for whatever reasons, LAD should give an interim reply to inform the applicant.

7. We note that when the complainant lodged the complaint with this Office, he still used his "pseudonym" A. We had to point out to him that under Section 23(c) of The Ombudsman Ordinance, any person who made a statement to the Ombudsman which he knew to be false committed an offence and was liable to a fine of $10,000 and to imprisonment for six months. This Office understood that LAD had referred the case to the Police for follow-up action.

LEISURE AND CULTURAL SERVICES DEPARTMENT (LCSD)

Case No. OMB 2002/2284

LCSD – venue allocation – failing to balance the interests of two groups of users

The complainant complained against LCSD for closing the athletic track of a sports ground whenever the infield was booked for football activities.

2. LCSD explained that joggers using the athletic track might be accidentally hurt by balls flying off the infield. This Office pointed out that in bigger sports grounds, the concurrent use of both the field and track would be possible to satisfy the interest of both groups of users. On review, the Department agreed that the outer three lanes of the athletic track could be set aside for jogging during football activities.

3. LCSD had put up notices at its sports grounds to advise users of this arrangement. They would closely monitor the situation and make appropriate adjustment for individual venues.

IMMIGRATION DEPARTMENT (Imm D)

Case No. OMB 2002/0104

Imm D – marriage celebration – impropriety in handling a telephone enquiry on application to celebrate marriage outside office hours

The complainant telephoned the Marriage Registry to enquire about application for a special licence to celebrate the marriage ceremony outside the registry's normal working hours. The officer answering his enquiry was unpleasant and unhelpful.

2. Under Section 11 (1) of the Marriage Ordinance ("the Ordinance"), the Director of Immigration, with authority delegated from the Chief Executive, can authorise the grant of a special licence for marriage to be celebrated at a prescribed time and place. Although the criteria for granting a special licence are not prescribed in the Ordinance, Form 3 of the First Schedule of the Ordinance implies that the applicant has to demonstrate sufficient cause. Application has to be made on a standard form and for a fee of $10,785. In the past five years, Imm D has approved only three special applications.

3. The officer handling the enquiry claimed that he could not recall the telephone conversation and that he had no intention to be unpleasant or unhelpful to the complainant. Imm D acknowledged that the staff's performance was short of expectations and that he should improve his communication skill. The officer had been counselled and training for all enquiry staff would be stepped up. Imm D apologised to the complainant and provided him with more information on the special marriage licence.

Summaries of Selected Cases Concluded by Alternative Dispute Resolution

OFFICE OF THE TELECOMMUNICATIONS AUTHORITY (OFTA)

Case No. OMB 2002/2769

OFTA – mobile call charges – failing to handle a complaint properly

The complainant lodged a complaint with OFTA against a mobile telephone company ("the Company") for intimidating him when reminding him by phone to pay his charges; invading his privacy by ringing up his mobile telephone thrice; and charging him for those three calls. He alleged that OFTA had failed to conduct an independent investigation as it only relayed the Company's response to him.

2. To understand the case, OFTA had to obtain relevant information from the Company. In follow-up, OFTA had written to and telephoned the Company 14 times over the case. The Company subsequently agreed to waive the call charges, at $3.60, for the three calls.

3. The Ombudsman considered that OFTA had actively pursued the case and repeatedly relayed the complainant's request to the Company. It had also reported progress to the complainant. If the complainant believed that staff of the Company had intimidated him, he should consider seeking Police assistance.

OFFICE OF THE TELECOMMUNICATIONS AUTHORITY (OFTA)

Case No. OMB 2002/3004

OFTA – broadband internet service – failing to handle a complaint properly

The complainant had lodged complaints on several occasions to OFTA against a telecommunication network operator ("the operator") for failing to maintain a stable internet connection speed; frequent inaccessibility of its customer service hotline; and not adhering to the maintenance service appointment. He alleged that OFTA was still investigating his case after five months; had, on one occasion, failed to answer his telephone enquiry properly; and was too lax in regulating the operator concerned.

2. On the first point, OFTA's records showed that replies had been issued within 30 working days to keep the complainant informed of the progress. OFTA had abided by its performance pledge.

3. On the second point, OFTA indicated that the staff concerned had provided the complainant with the required information after taking 20 minutes to search for the details.

4. On the third point, OFTA would only investigate and impose penalty on operators contravening the Telecommunications Ordinance.

5. The Ombudsman was of the view that OFTA had followed up the complaint properly and replied to the complainant promptly. Its response to the complainant's telephone enquiry was reasonable. OFTA had also properly monitored the service of the operator in accordance with its licence requirements and the relevant legislation.

6. The service provided by an operator to its customer was governed by the terms of the contract. As this was a commercial activity, the complainant should have approached the operator direct or complained to the Consumer Council. Thus, this Office considered that OFTA ought to go by this basic guide in handling complaints.

POST OFFICE (PO)

Case No. OMB 2002/2256

PO – payment of charges – (a) failing to understand and follow the guidelines to collect charges on behalf of Water Supplies Department; and (b) crediting a payment wrongly resulting in the disconnection of the complainant's water supply

The complainant, the registered consumer of a water meter, claimed that at about 4 p.m. on 21 June, PO's hotline centre informed her that water deposits could be paid at post offices. At about 5 p.m. on the same day, she presented a Notice on Conditions for Withholding Disconnection ("Notice") issued by Water Supplies Department ("WSD") for payment but counter staff at PO told her that payment could not be effected. Repeating the advice from the hotline centre and insisting on payment, she persuaded the staff to accept the payment. Subsequently, WSD records still showed the water deposit as outstanding and her water supply was disconnected on 25 June.

2. WSD records showed that the complainant's water deposit was due on 13 May. After issuing a reminder on 21 May, WSD staff visited her residence on 19 June and left the Notice urging her to settle the outstanding deposit "at the WSD Customer Enquiry Centre before the end of the next working day". When the deposit remained outstanding, the Department disconnected the water supply. She alleged that PO had erroneously treated her payment as settlement for water charges and not for deposit as actually requested.

3. PO had established guidelines on the collection of water charges and water deposits on behalf of WSD. Staff would input the Receipt Number or Type of Payment shown on the bills into the computer under either "water charges procedures" or "water deposits procedures". If the bills did not display such data, the staff would call WSD to clarify.

4. PO pointed out that the Notice produced by the complainant was not an ordinary bill as it did not bear a Receipt Number or show Type of Payment. After several futile attempts to process the payment under "water deposits procedures", the staff informed the complainant accordingly and suggested that she paid at WSD's Customer Enquiry Centre as soon as possible, as advised in the Notice. The complainant refused to listen and the staff could not call WSD as it was already after office hours. As the complainant insisted on payment, the staff tried again. The payment was eventually accepted under "water charges procedures". The staff alerted the complainant to this procedure and advised her to inform WSD to adjust her account as soon as possible.

5. According to the record kept by the Integrated Call Centre under the Efficiency Unit of Government Secretariat, the complainant had called the Centre to enquire about the payment of "water charges", and not "deposits", at post office.

6. This Office considered that there was no impropriety on the part of PO. The Department had clear guidelines for staff on handling payment of water charges and deposits. The staff concerned had followed the established procedures. This Office considered that disconnection of water supply was due to the complainant's delay in settling the deposit, her failure to follow the advice of WSD and her refusal to listen to PO counter staff.

7. This Office considered the complaint unfounded.

RADIO TELEVISION HONG KONG (RTHK)

Case No. OMB 2002/0478

RTHK – complaint handling – failing to handle the complaint properly

The complainant requested a song in a RTHK programme broadcast in the small hours. This was not done immediately. Seven days later, he telephoned to enquire about the delay. RTHK staff offered several possible reasons for it. The song was then broadcast two days later. In the 11 days after his first telephone enquiry, the complainant made numerous calls to several staff members of RTHK to express his dissatisfaction but refused to accept the explanations offered. He lodged a complaint with this Office against RTHK for giving a reply that, he suspected, did not tally with the facts and for not handling his complaint properly.

2. The Ombudsman considered that the complaint had been handled in accordance with RTHK guidelines and procedures for "Handling of Complaints from the Public". The Department had tried to respond patiently to the complainant's repeated enquiries. There was no *prima facie* evidence of impropriety in the process or deviation from the facts. The case was, therefore, closed.

3. On learning that this Office would not investigate the complaint further, the complainant made dozens of telephone calls to several staff members of this Office, insisting that there was impropriety on the part of RTHK and stressing that the song should have been broadcast immediately.

4. This Office considered the broadcast, or not, of a song immediately to be a trivial matter, The Ombudsman, therefore, decided that in accordance with Section 10(2)(b) of the Ombudsman Ordinance, this Office would not make further investigation.

THE TREASURY

Case No. OMB 2002/1440

The Treasury – retirement benefits – delaying issue of pensioner's card and medical treatment forms

The complainant, a retired civil servant, complained against the Treasury for not issuing his pensioner's card and medical treatment forms before his retirement. Before these were eventually issued to him 10 to 14 days after his retirement, he had to get the forms in person from the Treasury.

2. The Treasury had to verify the status and eligibility for Government medical benefits for all retired civil servants on their day of retirement. It was, therefore, not possible to issue the documents in advance.

3. We pointed out that verification and issue of the documents could be done in advance, especially for officers whose retirement dates were unlikely to change.

4. After reviewing the arrangement, the Treasury would issue the documents approximately one week before an officer's retirement.

TRANSPORT DEPARTMENT (TD)

Case No. OMB 2002/0194

TD – handling of application – failing to handle properly an application for Certificate of Clearance

Before the complainant bid for seven vehicles by auction, he applied to TD for the Certificate of Clearance of the vehicles to check for outstanding fines. Because the information on one vehicle was missing from the print-out, he had to settle the outstanding fines of that vehicle before he could effect the transfer of ownership.

2. According to TD's established procedures, the staff handling the application would use the vehicle registration marks ("VRMs") shown in the application to retrieve the data from the computer. For those applicants who wanted a written record, a Certificate of Clearance would be printed out.

3. TD apologised to the complainant for missing the data of one vehicle from the print-out through oversight of the staff. The officer concerned was given a written warning and urged to adhere to departmental guidelines when handling applications. TD also amended its procedural guidelines, requiring the printing out of the information of all the VRMs listed in applications. In addition, TD staff would make on-the-spot verification with applicants as to whether all the information under request had been included in the print-out.

Summaries of Selected Cases Concluded by Alternative Dispute Resolution

WATER SUPPLIES DEPARTMENT (WSD)

Case No. OMB 2002/1900

WSD – water seepage – failing to take proper follow-up action against water seepage

The complainant alleged that there was water seepage on the ceiling of his kitchen. WSD conducted a "flow check" for 30 minutes at the unit suspected to have caused the seepage. If the water pipes leaked, the meter would register water consumption. Negative results led WSD to conclude that there was no serious leakage. However, the complainant was dissatisfied and queried the reliability of such test.

2. WSD staff had conducted the test, which had been in use for a long time, in accordance with established procedures. As no serious leakage was detected, the Department could not take further action under the Waterworks Ordinance.

3. This Office would not comment on the reliability of the test as this involved professional judgement. However, we had received a number of complaints expressing doubt about the reliability of the test in the face of current advances in technology. We, therefore, asked WSD to consider alternative methods for testing.

4. In response, WSD pointed out that the current test was the only practical one that would not cause damage to the pipes or result in costs for reinstatement, say, of walls. In this light, WSD decided to continue with the existing method.